



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/535,067      | 03/23/2000  | Ronald O. Bubar      | 4645/31             | 1606             |

22859 7590 01/21/2004

INTELLECTUAL PROPERTY GROUP  
FREDRIKSON & BYRON, P.A.  
4000 PILLSBURY CENTER  
200 SOUTH SIXTH STREET  
MINNEAPOLIS, MN 55402

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/535,067

Applicant(s)

BUBAR, RONALD O.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12, 13, 15-23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 13, 15-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The 112 first paragraph rejection is hereby withdrawn because applicant's argument is found to be persuasive.

The 103 rejection of claims 12, 13 and 15-26 over the de Bruijne et al , Paulucci and the recipe on cranberry pizza is hereby withdrawn.

Claims 12-13, 16, 17-23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallin et al ( 4623542).

Wallin et al disclose a laminated crust comprising alternating substantially discrete layers of proofed dough and roll-in shortening. The dough comprises about 45-60% by weight flour, about 30-45% by weight water, .5-10% shortening and about 4-20% roll-in shortening. The laminated dough is docked. ( see col. 7 lines 22-48, col. 11 lines 26-30 and 64-68, col. 10 lines 1-2)

Wallin et al do not disclose using margarine, having pizza topping on the laminated crust and baking the laminated dough.

It would have been obvious to one skilled in the art to use margarine instead of shortening because it is well known in the art to use shortening, butter or margarine alternatively. Butter and margarine are more expensive than shortening and give different taste and nutritional factor from shortening. It would have been obvious to one skilled in the art to select butter, margarine or shortening taking into consideration the above factors. As to applying pizza topping or forming a pizza, there is no identity standard to pizza because many types of topping are used to form pizza. For example, there are dessert pizza having fruit and cream. It would have been obvious to one skilled in the art to use a variety of filling to make different types of product. For

example, it would have been obvious to use tomato and cheese filling if one wants to make a breakfast pizza. Such concept is well known in the art; for instance, there is breakfast burrito, breakfast taco etc.. There is also pizza pocket which has the same structure as the one disclosed by Wallin et al. While Wallin et al teach to fry the product, baking and frying are well known alternative cooking methods. Frying gives a better texture but has the drawn back of increasing the fat content. It would have been obvious to one skilled in the art to bake the product if one wants a healthier product having lower fat content. This alternative is known in the art; for example, there are potato chips that are fried and there are reduced-fat potato chip that are baked. The Wallin et al product also differs from the claimed product in the way it is made. However, determination of patentability in product-by-process claims is based on the product itself.

Claims 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 27, the limitation "to form a fatted sheet" is unclear because the fatted sheet is formed in the process for forming the final laminated crust; also it is unclear how the limitation ties in with the rest of the claim. The following language is suggested:

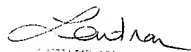
Applicant's arguments with respect to claims 12-13, 15-23, 25-28 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.

  
LIEN TRAN  
Art Unit 1761  
Group 1760